PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 6013-106PCT	**FOR FURTHER ACTION**	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/CA 03/01080	International filing date *(day/month/year)* 16.07.2003	Priority date *(day/month/year)* 16.07.2002
International Patent Classification (IPC) or both national classification and IPC C07H15/04		
Applicant UNIVERSITE LAVAL et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

   ☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

   These annexes consist of a total of 1 sheets.

3. This report contains indications relating to the following items:

   - I ☒ Basis of the opinion
   - II ☐ Priority
   - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
   - IV ☐ Lack of unity of invention
   - V ☐ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
   - VI ☐ Certain documents cited
   - VII ☐ Certain defects in the international application
   - VIII ☐ Certain observations on the international application

Date of submission of the demand	Date of completion of this report
20.01.2004	17.09.2004
Name and mailing address of the international preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Klein, D Telephone No. +49 89 2399-7896

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. PCT/CA 03/01080

I. Basis of the report

1. With regard to the **elements** of the international application *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17))*:

Description, Pages

1-21 as originally filed

Claims, Numbers

1-6 received on 01.09.2004 with letter of 01.09.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

   These elements were available or furnished to this Authority in the following language: , which is:

   ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).

   ☐ the language of publication of the international application (under Rule 48.3(b)).

   ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

   ☐ contained in the international application in written form.

   ☐ filed together with the international application in computer readable form.

   ☐ furnished subsequently to this Authority in written form.

   ☐ furnished subsequently to this Authority in computer readable form.

   ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

   ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

   ☐ the description, pages:

   ☐ the claims, Nos.:

   ☐ the drawings, sheets:

5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

   (Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

   see separate sheet

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

   ☒ the entire international application,

   ☐ claims Nos.

   because:

   ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

   ☐ the description, claims or drawings *(indicate particular elements below)* or said claims Nos. are so unclear that no meaningful opinion could be formed *(specify)*:

   ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

   ☒ no international search report has been established for the said claims Nos. 1-6

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

   ☐ the written form has not been furnished or does not comply with the Standard.

   ☐ the computer readable form has not been furnished or does not comply with the Standard.

III: No opinion with regard to novelty, inventive step and industrial applicability:

The subject-matter as originally filed has been **fully searched** and an opinion has been given (set of claims #1).

Then, the application has amended the set of claims as well as description, stating that the structures claimed and described in the application are not exactly the right ones and should be therefore corrected (set of claims #2). These amendments, not only did not comply with Rule 70.2(c) PCT, but also introduced subject-matter **which had not been searched**.

Finally, the applicant decided to file a new set of claims wherein a "new" compound is now claimed on the basis of its origin as well as its physico-chemical properties (MS and NMR), compound which was originally present in the description (set of claims #3).

No opinion will be given for this last set of claims for the following reason :

The applicant has admitted himself that the structures claimed in the set of claims #1 are wrong, therefore the compounds of set of claims #3, according to the applicant, does not have the structure as claimed in set of claims #1 but either an unknown structure of the structure as claimed in set of claims #2.
In both cases, no search as been carried out , as only the structures according to set of claims #1, have been searched.

As it is not the policy of the European Patent Office to give an opinion concerning subject-matter which has not been searched, no opinion will be given for present claims 1-6.

CLAIMS :

1. An antimicrobial compound obtained by culturing *Pseudozyma flocculosa* in a culture medium and characterized by the following NMR and MS spectra: FABMS: 877.5 ($M+Na^+$); LCMSMS 75 eV: 853 (M-, 18), 836 (5), 759 (5), 753 (19), 711 (100), 669 (21), 651 (15), 605 (14), 573 (28), 517 (11), 507 (28), 350 (8), 143 (9); IR: 3422 cm^{-1}, 2926 cm^{-1}, 2854 cm^{-1}, 1744 cm^{-1}, 1246 cm^{-1}, 1073 cm^{-1}, 1044 cm^{-1}. ^{1}HNMR (MeOH-d4): 5.3-3.3 ppm (19H, mm), 2.5 ppm (2H, d), 2.3 ppm (2H, m), 2.2 ppm (3H, s), 2.1 ppm (3H, s), 1.5-1.3 ppm (30H, broad doublet), 1.0 ppm (3H, t); ^{13}CNMR (MeOH-d4): 176 ppm, 170 ppm, 170 ppm, 170 ppm, 104 ppm, 101 ppm, 80 ppm, 77 ppm, 75 ppm, 74 ppm, 73 ppm, 73 ppm, 72 ppm, 72 ppm, 70 ppm, 69 ppm, 68 ppm, 68 ppm, 63 ppm, 61 ppm, 43 ppm, 42 ppm, 36 ppm, 32 ppm, 29 ppm (11 superimposed carbon atoms), 25 ppm, 22 ppm, 19 ppm, 19 ppm, 13 ppm.

2. An antimicrobial composition comprising an effective antimicrobial amount of the compound or an analog, a derivative or a salt thereof as defined in claim 1.

3. Use of a compound or an analog, a derivative or a salt thereof as defined in claim 1 as an antimicrobial.

4. Use of a compound or an analog, a derivative or a salt thereof as defined in claim 1 in the manufacture of an antimicrobial composition.

5. Use of a compound or an analog, a derivative or a salt thereof as defined in claim 1 for the manufacture of an antimicrobial composition containing said compound or an analog, a derivative or a salt thereof with at least one other active ingredient.

6. A method for the preparation of a compound as defined in claim 1, which comprises the step of cultivating *Pseudozyma flocculosa* in a culture medium and isolating said compound from the culture medium.